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CHARLES ELMORE DROPLEY
CLERK

**IN THE SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1945

No. 257

ED. C. WRIGHT,

Petitioner,

vs.

**BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY
OF BROWARD, STATE OF FLORIDA**

Respondent.

**BRIEF OF RESPONDENT IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI.**

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INDEX

Subject Index

	Page
SUMMARY STATEMENT	1, 2, 3
QUESTION PRESENTED	4
REASONS WHY THE WRIT SHOULD NOT BE ALLOWED	5
STATEMENT OF JURISDICTION	5
ARGUMENT AGAINST ALLOWANCE OF WRIT ...	6

SUMMARY OF PREVIOUS LITIGATION

Concerning the identical bonds which are the subject matter of the present litigation, and concerning which the Petition for Certiorari is presented.

1st Appeal: From District Court to Circuit Court of Appeals.

N. A. Turner as Trustee, vs. Board of Public Instruction of Broward County, Florida, 75 Fed. (2nd) 147.
(Record No. 7551) (Appeal Dismissed)

2nd Appeal: From District Court to Circuit Court of Appeals.

Roberts vs. Board of Public Instruction for the County of Broward, State of Florida, 112 Fed. (2nd) 459.
(Record 9381) (District Court Affirmed)

3rd Appeal: From District Court to Circuit Court of Appeals.

Roberts vs. Board of Public Instruction for the County of Broward, State of Florida, 117 Fed. (2nd) 943.
(Record 9596)
(District Court Affirmed—Re-hearing Denied)

Petition for Certiorari—From Circuit Court of Appeals to Supreme Court of the United States.

Albert Roberts, Jr., Petitioner, vs. Board of Public Instruction for the County of Broward, State of Florida, 313 U. S. 582, 61 Supreme Court Reporter 1101.
(Record 972 in this Court) (Certiorari Denied)

4th Appeal: From District Court to Circuit Court of Appeals.

Ed. C. Wright vs. Board of Public Instruction for the County of Broward, State of Florida, 142 Fed. (2nd) 577. (Record No. 10607) (District Court Reversed)

5th Appeal: From District Court to Circuit Court of Appeals.

Ed. C. Wright vs. Board of Public Instruction for the County of Broward, State of Florida, 148 Fed. (2nd) 367. (Record No. 11209) (District Court Affirmed)
(Petition for Re-hearing Denied)

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SUMMARY STATEMENT

Ed. C. Wright, Petitioner, is the assignee and present holder of thirteen bonds and the coupons belonging thereto, which have been the subject matter of continuous litigation since October 3, 1932. His predecessor in title, N. A. Turner, as Trustee, sold the bonds after an adverse opinion on the first appeal. Albert Roberts, Jr., predecessor in title of coupons belonging to said bonds sold same to Ed. C. Wright after adverse opinions rendered in the 2nd. and 3rd. appeals. Ed. C. Wright, Petitioner herein, took the 4th. and 5th. appeals, and now brings this Petition for Certiorari.

The first holder, N. A. Turner, as Trustee, attempted

to recover a general judgment upon the bonds and coupons in the District Court of the United States for the Southern District of Florida, and such bonds and coupons were introduced in evidence and properly identified as Exhibits. The Jury found for the Defendant, (R. 7551 page 153), and a judgment was entered on April 10, 1934, that the Plaintiff "do not recover". (R. 7551 p. 153). Plaintiff took an appeal to the Circuit Court of Appeals, which was dismissed by said Court in the case of N. A. Turner, as Trustee, vs. Board of Public Instruction for Broward County, Florida, 75 Fed. (2nd) 147. Upon Petition of Counsel for Plaintiff, the original bonds and coupons which had been introduced and identified by Court markings were allowed to be withdrawn by Order of the District Court. (R. 9596 p. 309).

The bonds and coupons next turned up in the possession of Ed. C. Wright & Company, but all of the identification markings, showing that they had been introduced in evidence in litigation had been removed by ink eradicator, although careful examination revealed traces of the identifying Exhibit numbers. Ed. C. Wright & Company, was a corporation of Florida, with Ed. C. Wright as President and Albert Roberts, Jr., as Vice President. Before the institution of Municipal Bankruptcy proceedings the fact of previous litigation and the invalidity of the bonds and coupons were discussed with these officials. (R. 9596 pp. 150 and 156). Upon the filing of Municipal Bankruptcy proceedings by the Board of Public Instruction of Broward County, Florida, Albert Roberts, Jr., filed a claim upon the detached coupons claiming to own same, and Ed. C. Wright & Company filed a claim upon the bonds, claiming to own same. In the Municipal Bankruptcy proceedings both Ed. C. Wright and Albert Roberts, Jr., opposed the proceedings at every stage, attempting to force recognition of the bonds

and coupons. Upon the disallowance of the claims filed upon said bonds and coupons, (Record 9596 pp. 238, 239, 240), Albert Roberts, Jr., took the 2nd. and 3rd. appeals to the Circuit Court of Appeals, while Ed. C. Wright stood silent. The Circuit Court of Appeals in a very strong opinion pointed out the scheme and connivance of these two parties, and upheld the District Court's Interlocutory Decree disallowing the claims. See opinion in Roberts vs. Board of Public Instruction, 117 Fed. (2nd) 943, certiorari denied 313 U. S. 582, 61 Supreme Court Reporter 1101.

The Municipal Bankruptcy proceedings were concluded in due time and the securities were duly exchanged. Then Ed. C. Wright, who had remained silent while Albert Roberts, Jr., had been litigating, came forward as the assignee of Ed. C. Wright & Company and of Albert Roberts, Jr., claiming that he was an innocent purchaser for value without notice, that he was not advised of the previous litigation by his associate and Vice President of the corporation, and prayed that he be not bound by the decisions and rulings. From adverse rulings by the District Court, he took the 4th. and 5th. appeal, and now prosecutes this Petition for Certiorari.

Thus issues which should have been settled by jury verdict in April 1934, and certainly by the Interlocutory Decree in the Municipal Bankruptcy proceedings duly affirmed by the Circuit Court of Appeals, have been kept alive by various and sundry transfers and assignments and by continuous litigation over a period of eleven years. The present Petition of Certiorari is the second attempt to bring this case to this Court.

QUESTION PRESENTED

The particular question involved is the correctness of an Interlocutory Decree in Municipal Bankruptcy Proceedings brought under Chapter IX of the Bankruptcy Act, which Interlocutory Decree was entered March 6, 1940 (R. 9596 p. 403) and approved by the Circuit Court of Appeals, in *Albert Roberts, Jr., vs. Board of Public Instruction*, 117 Fed. (2nd) 459. Ed. C. Wright, the present litigant, hopes to recover upon the bonds and coupons disallowed in the Interlocutory Decree by the entry of a general judgment in the law courts. He hopes to avoid the disallowance of the claim in the bankruptcy proceedings and subsequent approval by the Circuit Court of Appeals, as well as the appropriate defenses of laches, estoppel, *res adjudicata*, *stare decisis*, as well as actual bad faith, upon the grounds that he was misled as to the effect of the rulings in the bankruptcy proceedings, that he was without the benefit of advice of counsel, that he was taken by surprise, and that he was a bona fide purchaser for value without notice. If these allegations constitute a sufficient defense, which, if duly proven, would have the effect of avoiding the findings in the Interlocutory Decree, they must be substantiated by evidence. The Circuit Court of Appeals Ordered the District Court to take testimony upon these issues, and in compliance with the opinion of the Circuit Court of Appeals, the District Court entered an Order providing for the taking of testimony, from which order another appeal was taken. The actions of the litigant Ed. C. Wright clearly demonstrate that he does not wish to have testimony taken as to the truth or falsity of his claims, but prefers to keep the matter in the Appellate Courts. On the 5th. Appeal, the Circuit Court of Appeals approved the procedural order of the District Court, and Petitioner now brings Petition for *Certiorari* to this Court.

REASONS WHY THE WRIT SHOULD NOT BE ALLOWED

The only step taken between the 4th. and 5th. appeals, was the entry of the Opinion-Order regulating future proceedings, and providing for the taking of testimony in accordance with the opinion of the Circuit Court of Appeals in the 4th. appeal. The Circuit Court of Appeals' opinion upon the 4th. appeal was not complained of by Petitioner, but the entry of a procedural order based upon same, gave the Petitioner an opportunity to resort to the appellate courts again, and thus by protracted litigation attempt to force some kind of settlement. The Courts should not be used for such purposes.

STATEMENT OF JURISDICTION

It does not appear that the jurisdiction of this Court is properly invoked, for no showing is made that the entry of the procedural order involves a case of particular gravity or general importance sufficient to cause said matter to be brought here by certiorari under the provisions of Section 240 (a) of the Judicial Code as amended (28 U. S. C. A. Sec. 347 (a)). The Opinion-Order appealed from (R. 11209 p. 6) was not a final order but merely a procedural one, arranging time for further proceedings consistent with the decision of the Circuit Court of Appeals. Yet another appeal lies when the testimony has been taken and a decision rendered thereon. The questions to be determined cannot be determined without evidence, and petitioner is reluctant to present evidence to support his contentions.

ARGUMENT AGAINST ALLOWANCE OF WRIT

Five points are argued by Petitioners in support of the Petition for Certiorari, but Respondent fails to see that any of the points are involved in the entry of the procedural order (R. 11209 p. 6) and the opinion of the Circuit Court of Appeals approving same. See *Ed. C. Wright vs. Board of Public Instruction for the County of Broward, State of Florida*, 148 Fed. (2nd) 367. We respectfully direct the attention of this Honorable Court to such Opinion-Order of the District Court and the Opinion of the Circuit Court of Appeals, and leave the matter to the discretion of this Court. No useful purpose could be served by bringing this case here for review at this time.

Respectfully submitted,

JULIAN E. ROSS,

JOHN D. KENNEDY,

By.....

Attorneys for Respondent.

